No. 94-1903

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In The

Supreme Court of The United States

October Term, 1994

IRVING HOCHBERG, MARTA KLAJMAN, SHELLEY SCHEFFLER, FIRST CHURCH OF CHANGO, INC., individually and on behalf of all members of the FIRST CHURCH OF CHANGO, INC.,

Petitioners,

- against-

MAYNARD HOWLETT, EMANCIPATION, and CULT AWARENESS NETWORK, NY-NJ, C.F.F., INC.,

Respondents.

JOINT REPLY OF PETITIONERS TO RESPONDENTS' OPPOSING BRIEFS

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Respondents.

JOINT REPLY BRIEF

Petitioners reply to the issues raised in the Respondents' briefs as follows:

REPLY TO BRIEF OF RESPONDENT CULT AWARENESS NETWORK, NY-NJ, C.F.F., INC.

1. Disputed facts in Summary Judgment Proceedings

Respondent CAN alleges that:

a) The District Court found the CAN brochures that were sent to ten Church members emanated from the CAN national organization and were not CAN Local Affiliate brochures as alleged by Petitioners

b) The District Court found that the author of the CAN Manual of Surveillance was not a member of Local Affiliate Respondent CAN at the time of the Manual's preparation, and that this issue was not disputed by Petitioners. (CAN BR. P. 1-2).

But the record of the case indicates that Petitioners placed both the issues in a) and b) above in dispute. As such, the District Court erred in not presuming that Petitioners' version of the disputed facts was true in determining Summary Judgment, see: Eastman Kodak Co. v. Image Technical Services, Inc. 504 US 451 at 456; Anderson v. Liberty Lobby, Inc. 477 US 242 at 255; Adickes v. S.H. Kress & Co. 398 US 144

2. Rule 56 (f) FRCP; Continuance for Discovery

Petitioner CAN alleges that the District Court correctly exercised its discretion in denying a continuance of Summary Judgment proceedings to enable Petitioners to obtain Discovery since no specific Rule 56(f) affidavit requested it. (CAN BR. P. 3).

But the record of the case reflects that a Rule 56 (f)

continuance was specifically requested in a Sworn Affidavit to enable Petitioners to depose a material witness. Accompanying Sworn Affidavits in Opposition indicated why the witness was material and contained the four factors listed in Petitioners' Petition, Page 23, FN. 8.

The District Court erred since, "form is not to be exalted over fair procedures," when continuance of Summary Judgment is requested. See: Littlejohn v. Shell Oil Co. 483 F 2d 1140 at 1146.

CONCLUSION

Certiorari should be granted to Petitioners as representatives of a dissident religious organization.

REPLY TO BRIEF OF RESPONDENT HOWLETT

1. Mis-Statements of Facts

Respondent Howlett's brief is redolent with material misstatements of fact, namely:

a) Petitioners practice "a variant" of the Santeria religion (How. Br. ii). This is a self-serving statement, with no factual basis on record.

b) Respondent Howlett "cooperated" with Petitioners in Discovery. (How. Br. 1).

The reverse is true:

i) Respondent Howlett and his counsel (later of counsel) blocked all access to a material witness, whom Petitioners wished to depose to properly

oppose Summary Judgment. The District Court refused a continuation and granted Summary Judgment in favor of Respondent Cult Awareness Network. The record reflects that the material witness was a personal friend of both Respondent Howlett and his counsel (later of counsel).

ii) Respondent Howlett persistently refused to respond to Petitioners' interrogatories for identification of persons with knowledge or information of his affirmative responses for a 16 month period. A response was only made 11 days before Respondent Howlett's motion to dismiss which the District Court in error granted.

iii. Petitioners made documentary and interrogatory discovery to Respondent Howlett in August, 1992 (within 5 months of filing their claims, see Petitioners' Petition P. 15).

c) Petitioners willfully failed to provide documents or appear at their deposition as ordered (How. Br. 2). But Petitioners moved for Certification for an Interlocutory appeal against the Court's Discovery Order.

d) The Court's Discovery Order was "a carefully drawn order" which balanced the rights of the parties, (How Br. 3).

The reverse is true:

i) During the course of oral argument, the District Court made gratuitous remarks on record about a "disgusting cult" and deifying the "disgusting."

ii) The eventual "Order" consisted of a photocopy of a handwritten scrawl on the Blue Back of Petitioners' original motion to compel discovery and for a Protective Order.

iii) The handwritten order referred to rambling discovery directions contained in the transcript of oral argument on discovery and class certification which, inter alia, literally forced Petitioners to render their Class Certification Motion moot.

(See Petitioners' Petition, P. 20).

2. Core Issues Trivialized

a) Respondent Howlett seeks to trivialize the issues raised by Petitioners' Certiorari Petition as merely relating to discovery issues of no public importance. (How. Br. 3).

b) Respondent Howlett fails to address the core issue of whether the forced disclosure of membership lists of a dissident Plaintiff organization in class action proceedings to protect its membership against harassment by Defendants, effectively chills and abridges the Constitutional rights sought to be enforced.[1]

c) None of the cases cited by Respondent Howlett on discovery address this issue. (How. Br. P. 3). None of the cases deal with the disclosure of membership lists of dissident Plaintiff organizations seeking to protect their members from harassment by class action

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[1] The identities of 10 members who were previously harassed and individual Petitioners were known to Respondents.

certification to preserve membership anonymity against reprisals.

d) The record indicates that Petitioner Howlett was exposed to criminal liability under both State and Federal law for the use of his P.O. Box number on many of the 21 harassing letters.[2]

e) The ordered disclosure of the membership lists of Petitioner Church to Respondent Howlett, placed the entire membership at risk and effectively nullified Petitioners' legal attempts (by anonymity of a class action) to protect individual members from further harassment and violations of their First Amendment rights.

CONCLUSION

Certiorari should be granted to Petitioners as representatives of a dissident religious organization.

Respectfully submitted by

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Dated: New York, New York
August 14, 1995

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[2] See: New York State Penal Law 240.30[1]; 18 USC 876 [Ch.41, Title 18, Sec. 876, Para. 3].